

BEFORE THE UNITED STATES  
JUDICIAL PANEL ON MULTI-DISTRICT LITIGATION

IN RE: ) MDL No. 2832  
)  
LIQUID TOPPING DISPENSING )  
SYSTEM ('447) PATENT LITIGATION )  
)

**FILED**

JUL 06 2018

Clerk, U. S. District Court  
Eastern District of Tennessee  
At Chattanooga

**NOTICE OF TAG-ALONG CASES**

Tikiz Franchising, LLC ("Tikiz") respectfully submits this Notice pursuant to Rule of Procedure 7.1(a). Tikiz believes that the following cases are related to In Re: Liquid Topping Dispensing System ('447) Patent Litigation, MDL No. 2832:

Kona Ice v. Hocking, et. al., Case No. 3-18-cv-646 (M.D. Fla.)

Kona Ice v. Hale, et. at., Case No. 1-18-cv-00041 (E.D. Tenn.)

Kona Ice v. O'Connor, et. al., Case No. 1-18-cv-00409 (S.D. Ohio)

A transfer order in MDL No. 2832 was previously issued on April 5, 2018, at Docket No. 35. Copies of the Docket Sheet and Complaint for each of these three cases are attached hereto as Exhibits A through C, respectively.

As shown in the Exhibits, and as relevant in MDL No. 2832, the same plaintiff (Kona Ice, Inc.) is asserting the same patent (U.S. Patent 9,751,447) against franchisees of Tikiz.

Dated: June 29, 2018

Respectfully submitted,

/s/Michael Culver

Michael Culver

Millen, White, Zelano & Branigan, P.C.

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Attorneys for Tikiz Franchising, LLC

**BEFORE THE UNITED STATES  
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IN RE: ) MDL No. 2832  
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LIQUID TOPPING DISPENSING )  
SYSTEM ('447) PATENT LITIGATION )  
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**NOTICE OF TAG-ALONG CASES**

**Schedule of Actions**

<b>Case Caption</b>	<b>Court</b>	<b>Civil Action No.</b>	<b>Judge</b>
Kona Ice, Inc. v. Virginia Hocking, Robert Hocking, P&P Hocking LLC	Middle District of Florida	3:18-cv-00646	Marcia Morales Howard
Kona Ice, Inc. v. Howard Hale, Fun Time Foods, LLC	Eastern District of Tennessee	1:18-cv-00041	Travis R. McDonough
Kona Ice, Inc. v. Sean O'Connor, Rikki O'Connor	Southern District of Ohio	1:18-cv-00409	Michael R. Barrett

**BEFORE THE UNITED STATES  
JUDICIAL PANEL ON MULTI-DISTRICT LITIGATION**

IN RE:	)	MDL No. 2832
	)	
LIQUID TOPPING DISPENSING	)	
SYSTEM ('447) PATENT LITIGATION	)	
	)	

**NOTICE OF TAG-ALONG CASES**

**Exhibit A**

**U.S. District Court  
Middle District of Florida (Jacksonville)  
CIVIL DOCKET FOR CASE #: 3:18-cv-00646-MMH-JRK**

Kona Ice, Inc. v. Hocking et al  
Assigned to: Judge Marcia Morales Howard  
Referred to: Magistrate Judge James R. Klindt  
Cause: 35:271 Patent Infringement

Date Filed: 05/15/2018  
Jury Demand: Plaintiff  
Nature of Suit: 830 Patent  
Jurisdiction: Federal Question

**Plaintiff**

**Kona Ice, Inc.**

represented by **Curtis Scott Fallgatter**  
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**ATTORNEY TO BE NOTICED**

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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Virginia Hocking**

represented by **Mark C. Perry**  
Law Office of Mark C. Perry  
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Fort Lauderdale, FL 33308-4048  
954-351-2601  
Fax: 954-351-2605  
Email: mark@markperryllaw.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Robert Hocking**

represented by **Mark C. Perry**  
(See above for address)

[https://ecf.flmd.uscourts.gov/cgi-bin/DktRpt.pl?805808165897786-L\\_1\\_0-1](https://ecf.flmd.uscourts.gov/cgi-bin/DktRpt.pl?805808165897786-L_1_0-1)

6/29/2018

*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant****P&P Hocking LLC**

represented by **Mark C. Perry**  
 (See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
05/15/2018	<u>1</u>	COMPLAINT against Robert Hocking, Virginia Hocking, P&P Hocking LLC with Jury Demand (Filing fee \$ 400 receipt number JAX 27785) filed by Kona Ice, Inc.. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Civil Cover Sheet)(RH) (Entered: 05/17/2018)
05/15/2018	<u>3</u>	SUMMONS issued as to Robert Hocking. (RH) (Entered: 05/17/2018)
05/15/2018	<u>4</u>	SUMMONS issued as to Virginia Hocking. (RH) (Entered: 05/17/2018)
05/15/2018	<u>5</u>	SUMMONS issued as to P&P Hocking LLC. (RH) (Entered: 05/17/2018)
05/16/2018	<u>2</u>	Patent Report sent to Alexandria, VA. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2) (RH) (Entered: 05/17/2018)
05/22/2018	6	NOTICE: Based upon the parties' filings, the Court is satisfied of the existence of subject matter jurisdiction over this action. (MMG) (Entered: 05/22/2018)
05/22/2018	<u>7</u>	<b>NOTICE of designation under Local Rule 3.05 - track 2. Signed by Deputy Clerk on 5/22/2018. (Attachments: # <u>1</u> Case Management Report Form, # <u>2</u> Consent Letter and Form)(JW) (Entered: 05/22/2018)</b>
06/12/2018	<u>8</u>	Unopposed MOTION for Extension of Time to File Answer re <u>1</u> Complaint by All Defendants. (Perry, Mark) Motions referred to Magistrate Judge James R. Klindt. (Entered: 06/12/2018)
06/12/2018	<u>9</u>	NOTICE of Appearance by Mark C. Perry on behalf of Robert Hocking, Virginia Hocking, P&P Hocking LLC (Perry, Mark) (Entered: 06/12/2018)
06/12/2018	10	NOTICE by Robert Hocking, Virginia Hocking, P&P Hocking LLC re <u>8</u> Unopposed MOTION for Extension of Time to File Answer re <u>1</u> Complaint <i>Proposed Order Granting Defendants' Unopposed Motion for Extension of Time to Respond to Plaintiff's Complaint</i> (Perry, Mark) (STRICKEN and REMOVED per Order doc <u>11</u> ) Modified on 6/15/2018 (RH). (Entered: 06/12/2018)
06/13/2018	<u>11</u>	<b>ORDER granting <u>8</u> Defendants' Unopposed Motion for Extension of Time to Respond to Plaintiff's Complaint. Defendants shall have up to and including 7/16/2018 to respond to the Complaint (Doc. No. 1). The Notice of Filing Defendants', Virginia Hocking, Robert Hocking and P&amp;P Hocking, LLC, Proposed Order Granting Defendants' Unopposed Motion for Extension of Time to Respond to Plaintiff's Complaint (Doc. No. 10) is STRICKEN, and the Clerk of the Court is directed to remove it from the</b>

official court record. Signed by Magistrate Judge James R. Klindt on 6/13/2018. (MDC) (Entered: 06/13/2018)
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PACER Service Center			
Transaction Receipt			
06/29/2018 13:08:01			
PACER Login:	Msculver86:2948189:0	Client Code:	
Description:	Docket Report	Search Criteria:	3:18-cv-00646- MMH-JRK
Billable Pages:	2	Cost:	0.20

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6/29/2018

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

KONA ICE, INC.  
5945 CENTENNIAL CIRCLE  
FLORENCE, KENTUCKY 41042

Plaintiff,

vs.

ROBERT HOCKING

and

VIRGINIA HOCKING

and

P&P HOCKING LLC

Defendants.

Civil Action No.: 3:18-cv-646-J-310RK

Judge:

FILED  
2018 MAY 15 PM 3:45  
CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DISTRICT

**COMPLAINT FOR PATENT INFRINGEMENT AND DEMAND FOR JURY TRIAL**

Plaintiff Kona Ice, Inc. ("Kona Ice") complains against the Defendants Robert Hocking, Virginia Hocking and P&P Hocking LLC ("Defendants") as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement and arises under the Patent Laws of the United States, Title 35, United States Code.

**THE PARTIES**

2. Kona Ice is a Kentucky corporation having its principal place of business at 5945 Centennial Circle, Florence, Kentucky 41042. Kona Ice offers frozen treats, including flavored



shaved ice, through service vehicles, and it offers its products throughout the country through franchises.

3. Upon information and belief, Defendants Robert Hocking, 616 Stone Ridge Drive, Ponte Vedra, Florida 32081 and Virginia Hocking, 616 Stone Ridge Drive ay, Ponte Vedra, Florida 32081, are individuals, and P&P Hocking LLC, a Florida Limited Liability Company having a place of business at 616 Stone Ridge Drive, Ponte Vedra, Florida 32081, are actively, continuously, and systematically engaging in business in the State of Florida. Defendants have substantial and continuous contacts with this judicial district through their business activities.

#### **JURISDICTION AND VENUE**

4. Federal question jurisdiction is conferred pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue in this Court is based upon 28 U.S.C. §§ 1391(b)-(c), and 1400(b). Defendants reside in and have their principal place of business in Ponte Vedra, Florida, and as a result have a regular and established place of business within this district.

#### **BACKGROUND FACTS**

6. Kona Ice has, over the past several years, established a reputation as a supplier of frozen treats, including flavored shaved ice, in the United States. Kona Ice is represented through its franchisees throughout the United States.

7. The technology used by Kona Ice in its service vehicles, through which it offers frozen treats, including flavored shaved ice, is disclosed in United States Patent No. 9,751,447, entitled "Liquid Toppings Dispensing System" ("the '447 patent"), which was duly and legally issued on September 5, 2017. A copy of the '447 patent is attached hereto as Exhibit 1.

8. Kona Ice is the owner by assignment of the '447 patent.

9. On information and belief, Defendants use, operate, and own, service vehicles through which they offer frozen treats, including flavored shaved ice ("Defendants' Service Vehicle"). An image of Defendants' Service Vehicle is attached hereto as Exhibit 2.

**COUNT I - INFRINGEMENT OF U.S. PATENT NO. 9,751,447**

10. The allegations of paragraphs 1-9 are incorporated herein by reference as though fully set forth herein.

11. Defendants have infringed and continue to infringe the '447 patent by their operation and use of Defendants' Service Vehicle, through which they offer frozen treats, including flavored shaved ice. Defendants have infringed at least Claims 1, 2, 3, 4, 6, 7, and 10 of the '447 patent.

12. Claim 1 of the '447 patent recites the following limitations:

A mobile confectionary apparatus, comprising:

a vehicle including at least one upstanding side wall;

an interior space surrounded by the at least one upstanding side wall and configured to receive at least one person;

an opening extending through the at least one upstanding side wall and through which an item may be passed from the interior space to outside of the vehicle; and

a liquid toppings dispensing system including a housing being positioned adjacent to, and opposing, the at least one upstanding side wall and including a plurality of liquid dispensers configured to dispense at least

one liquid topping onto the item, each of the plurality of liquid dispensers being in fluid communication with at least one reservoir holding the at least one liquid topping, with the liquid toppings dispensing system being located externally of the at least one upstanding side wall and spaced entirely laterally therefrom by a gap.

13. Defendants' Service Vehicle incorporates each of the above recited limitations of Claim 1 of the '447 patent.

14. As can be seen in Exhibit 2, Defendants' Service Vehicle is a mobile confectionary apparatus, in that it is a service truck that can be moved, and it is used to provide confections to customers.

15. As can be seen in Exhibit 2, Defendants' Service Vehicle is a vehicle including at least one upstanding side wall, in that it is a truck, which is a vehicle, and incorporates at least one wall that is used to enclose a rear portion of the truck.

16. As can be seen in Exhibit 2, Defendants' Service Vehicle includes an interior space surrounded by the at least one upstanding side wall and configured to receive at least one person, in that the rear portion of the truck is designed to allow at least one person to be present therein.

17. As can be seen in Exhibit 2, Defendants' Service Vehicle includes an opening extending through the at least one upstanding side wall and through which an item may be passed from the interior space to outside of the vehicle, in that there is a window formed in the side wall, and that window is used to pass items to customers from the inside of the rear portion of the truck.

18. As can be seen in Exhibit 2, Defendants' Service Vehicle includes a liquid toppings dispensing system including a housing, in that it incorporates multiple spigots, enclosed by and supported by a frame, that are used to dispense liquid flavoring onto items sold to customers. In addition, the liquid toppings dispensing system is positioned adjacent to, and opposing, the at least one upstanding side wall, in that it is in close proximity to, and opposing, the side wall of the truck. In addition, the liquid toppings dispensing system includes a plurality of liquid dispensers configured to dispense at least one liquid topping onto the item, in that there is more than one spigot used to dispense liquid flavoring onto items sold to customers. In addition, each of the plurality of liquid dispensers are in fluid communication with at least one reservoir holding the at least one liquid topping, in that Defendants' Service Vehicle includes containers that house liquid toppings, and each spigot is attached to a container through a hose. In addition, the liquid toppings dispensing system is located externally of the at least one upstanding side wall and spaced entirely laterally therefrom by a gap, in that it is mounted on the outside of the truck, and there is a space between it and the side wall of the truck.

19. As can be seen in Exhibit 2, Defendants' Service Vehicle also incorporates each of the limitations the limitations of 2, 3, 4, 6, 7, and 10 of the '447 patent, as recited in Exhibit I hereto.

20. On information and belief, the acts of infringement complained of herein are being carried out willfully and with full knowledge by Defendants of the '447 patent. To explain, upon information and belief, Defendants are a franchise of Tikiz Shaved Ice & Ice Cream and/or Tikiz Franchising, LLC ("Tikiz"). As a franchise of Tikiz, Defendants are or should be aware from their interactions with Tikiz that Tikiz is aware of and monitors the patents owned by Kona Ice. Upon information, through those interactions, Defendants are aware

generally that Kona Ice owns patents relating to service vehicles that provide shaved ice and confections. Upon further information and belief, through those interactions, Defendants may be aware that Kona Ice is the owner of the '447 patent.

21. As a result of these actions by Defendants, Kona Ice has suffered and continues to suffer substantial injury, including irreparable injury, and will result in damages to Kona Ice, including loss of sales and profits, which Kona Ice would have made but for the acts of infringement by Defendants, unless Defendants are enjoined by this Court.

WHEREFORE, Kona Ice prays for relief against Defendants as follows:

- A. That a judgment be entered that Defendants have infringed, induced the infringement of, or contributed to the infringement of, United States Patent No. 9,751,447;
- B. That Defendants, their agents, sales representatives, servants and employees, associates, attorneys, parents, successors and assigns, and any and all persons or entities acting at, through, under or in active concert or participation with any or all of them, be enjoined and restrained preliminarily during the pendency of this action and thereafter permanently, from infringing United States Patent No. 9,751,447;
- C. That a judgment be entered that Defendants be required to pay over to Kona Ice all damages sustained by Kona Ice due to such acts of infringement and that such damages be trebled pursuant to 35 U.S.C. § 284 for the willful acts of infringement complained of herein;
- D. That this case be adjudged and decreed exceptional under 35 U.S.C. § 285 entitling Kona Ice to an award of its reasonable attorney fees and that such reasonable attorney fees be awarded;
- E. That Kona Ice be awarded its costs and prejudgment interest on all damages; and

F. That Kona Ice be awarded such other and further relief as the Court deems just and proper.

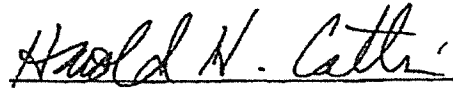
**JURY DEMAND**

Plaintiff Kona Ice, Inc. hereby demands and requests trial by jury of all issues raised that are triable by jury.

Respectfully submitted,

KONA ICE, INC.

Dated: May 15, 2018



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Attorneys for Plaintiff

**BEFORE THE UNITED STATES  
JUDICIAL PANEL ON MULTI-DISTRICT LITIGATION**

IN RE:	)	MDL No. 2832
	)	
LIQUID TOPPING DISPENSING	)	
SYSTEM ('447) PATENT LITIGATION	)	
	)	

**NOTICE OF TAG-ALONG CASES**

**Exhibit B**

AO120

**Live Database**  
**U.S. District Court - Eastern District of Tennessee (Chattanooga)**  
**CIVIL DOCKET FOR CASE #: 1:18-cv-00041-TRM-CHS**

Kona Ice, Inc. v. Hale et al  
Assigned to: District Judge Travis R McDonough  
Referred to: Magistrate Judge Christopher H Steger  
Cause: 35:271 Patent Infringement

Date Filed: 03/01/2018  
Jury Demand: Plaintiff  
Nature of Suit: 830 Patent  
Jurisdiction: Federal Question

**Plaintiff****Kona Ice, Inc.**

represented by **William J Rieder**  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Joseph Alan Jackson , II**  
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423-757-0404  
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**ATTORNEY TO BE NOTICED**

V.

**Defendant****Howard Hale****Defendant****Fun Time Foods, LLC**

Date Filed	#	Docket Text
03/01/2018	<u>1</u>	COMPLAINT against Fun Time Foods, LLC, Howard Hale ( Filing fee \$ 400 receipt number 0649-3615438.), filed by Kona Ice, Inc.. (Attachments: # <u>1</u>

[https://ecf.tned.uscourts.gov/cgi-bin/DktRpt.pl?666557344688694-L\\_1\\_0-1](https://ecf.tned.uscourts.gov/cgi-bin/DktRpt.pl?666557344688694-L_1_0-1)

6/29/2018



		Exhibit 1 (U.S. Patent No. 9,751,447), # <u>2</u> Exhibit 2 (Photographs of Tikiz trucks), # <u>3</u> Other Summons for Howard Hale, # <u>4</u> Other Summons for Fun Time Foods, LLC, # <u>5</u> Other Civil Cover Sheet)(Jackson, Joseph) (Entered: 03/01/2018)
03/01/2018	<u>2</u>	Certificate of Corporate Interest by Kona Ice, Inc.. (Jackson, Joseph) (Entered: 03/01/2018)
03/01/2018	<u>3</u>	PATENT AND TRADEMARK NOTICE in compliance with 35 USC 290 and/or 15 USC 1116 regarding 9,751,447 . (Jackson, Joseph) (Entered: 03/01/2018)
03/02/2018		District Judge Travis R McDonough and Magistrate Judge Christopher H Steger added. (JBR) (Entered: 03/02/2018)
03/02/2018	<u>4</u>	Order Governing Depositions. Signed by District Judge Travis R McDonough on 3/2/18. (JBR) (Entered: 03/02/2018)
03/02/2018	<u>5</u>	Order Governing Motions To Dismiss. Signed by District Judge Travis R McDonough on 3/2/18. (JBR) (Entered: 03/02/2018)
03/02/2018	<u>6</u>	Order Governing Sealing Confidential Information. Signed by District Judge Travis R McDonough on 3/2/18. (JBR) (Entered: 03/02/2018)
03/02/2018	<u>7</u>	Summons Issued as to Fun Time Foods, LLC, Howard Hale. (Attachments: # <u>1</u> Summons Issued - Fun Times Foods, LLC) (JBR) (Entered: 03/02/2018)
05/30/2018	<u>8</u>	MOTION for Extension of Time to Effect Service Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure by Kona Ice, Inc.. (Attachments: # <u>1</u> Exhibit A (March 2, 2018 Email to Howard Hale), # <u>2</u> Exhibit B (Tennessee Secretary of State Entry for Fun Time Foods, LLC), # <u>3</u> Exhibit C (Investigative Report)) (Jackson, Joseph) (Entered: 05/30/2018)
06/08/2018	<u>9</u>	ORDER granting <u>8</u> Motion of extention of time to effect service of process. Signed by District Judge Travis R McDonough on 6/7/2018. (AML, ) (Entered: 06/08/2018)
06/12/2018	<u>10</u>	SUMMONS Returned Executed by Kona Ice, Inc.. Howard Hale served on 6/9/2018. (Jackson, Joseph) (Entered: 06/12/2018)
06/12/2018	<u>11</u>	SUMMONS Returned Executed by Kona Ice, Inc.. Fun Time Foods, LLC served on 6/9/2018. (Jackson, Joseph) (Entered: 06/12/2018)
06/27/2018	<u>12</u>	STIPULATION for Extension of Time to Respond to Complaint Pursuant to Local Rule 12.1(a) by Kona Ice, Inc.. (Jackson, Joseph) (Entered: 06/27/2018)

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06/29/2018 13:10:24			
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Description:	Docket Report		

		Search Criteria:	1:18-cv-00041- TRM-CHS
Billable Pages:	2	Cost:	0.20

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6/29/2018

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
SOUTHERN DIVISION AT CHATTANOOGA

KONA ICE, INC.  
5945 CENTENNIAL CIRCLE  
FLORENCE, KENTUCKY 41042

Plaintiff,

vs.

HOWARD HALE  
1312 SUNNYFIELD LANE  
CHATTANOOGA, TENNESSEE 37412,

and

FUN TIME FOODS, LLC  
1312 SUNNYFIELD LANE  
CHATTANOOGA, TENNESSEE 37412.

Defendants.

Civil Action No. 1:18-cv-00041

Judge:

JURY DEMANDED

**COMPLAINT FOR PATENT INFRINGEMENT AND DEMAND FOR JURY TRIAL**

Plaintiff Kona Ice, Inc. ("Kona Ice") complains against the Defendants Howard Hale and Fun Time Foods, LLC ("Defendants") as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement and arises under the Patent Laws of the United States, Title 35, United States Code.

**THE PARTIES**

2. Kona Ice is a Kentucky corporation having its principal place of business at 5945 Centennial Circle, Florence, Kentucky 41042. Kona Ice offers frozen treats, including flavored shaved ice, through service vehicles, and it offers its products throughout the country through franchises.

Case 1:18-cv-00041-TRM-CHS Document 1 Filed 03/01/18 Page 1 of 7 PageID #: 1

3. Upon information and belief, Defendants Howard Hale, 1312 Sunnyfield Lane, Chattanooga, Tennessee 37412, an individual, and Fun Time Foods, LLC, a Tennessee Limited Liability Company having a place of business at 1312 Sunnyfield Lane, Chattanooga, Tennessee 37412, are actively, continuously, and systematically engaging in business in the State of Tennessee. Defendants have substantial and continuous contacts with this judicial district through their business activities.

#### **JURISDICTION AND VENUE**

4. Federal question jurisdiction is conferred pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue in this Court is based upon 28 U.S.C. §§ 1391(b)-(c), and 1400(b). Defendants reside in and have their principal place of business in Chattanooga, Tennessee, and as a result have a regular and established place of business within this district.

#### **BACKGROUND FACTS**

6. Kona Ice has, over the past several years, established a reputation as a supplier of frozen treats, including flavored shaved ice, in the United States. Kona Ice is represented through its franchisees throughout the United States.

7. The technology used by Kona Ice in its service vehicles, through which it offers frozen treats, including flavored shaved ice, is disclosed in United States Patent No. 9,751,447, entitled "Liquid Toppings Dispensing System" ("the '447 patent"), which was duly and legally issued on September 5, 2017. A copy of the '447 patent is attached hereto as Exhibit 1.

8. Kona Ice is the owner by assignment of the '447 patent.

9. On information and belief, Defendants use, operate, and own, service vehicles through which they offer frozen treats, including flavored shaved ice ("Defendants' Service Vehicle"). Images of Defendants' Service Vehicle are attached hereto as Exhibit 2.

**COUNT I - INFRINGEMENT OF U.S. PATENT NO. 9,751,447**

10. The allegations of paragraphs 1-9 are incorporated herein by reference as though fully set forth herein.

11. Defendants have infringed and continue to infringe the '447 patent by their operation and use of Defendants' Service Vehicle, through which they offer frozen treats, including flavored shaved ice. Defendants have infringed at least Claims 1, 2, 3, 4, 6, 7, and 10 of the '447 patent.

12. Claim 1 of the '447 patent recites the following limitations:

A mobile confectionary apparatus, comprising:

a vehicle including at least one upstanding side wall;

an interior space surrounded by the at least one upstanding side wall and

configured to receive at least one person;

an opening extending through the at least one upstanding side wall and

through which an item may be passed from the interior space to outside of the vehicle; and

a liquid toppings dispensing system including a housing being positioned adjacent to, and opposing, the at least one upstanding side wall and

including a plurality of liquid dispensers configured to dispense at least one liquid topping onto the item, each of the plurality of liquid dispensers being in fluid communication with at least one reservoir holding the at least one liquid topping, with the liquid toppings dispensing system being located externally of the at least one upstanding side wall and spaced entirely laterally therefrom by a gap.

13. Defendants' Service Vehicle incorporates each of the above recited limitations of Claim 1 of the '447 patent.

14. As can be seen in Exhibit 2, Defendants' Service Vehicle is a mobile confectionary apparatus, in that it is a service truck that can be moved, and it is used to provide confections to customers.

15. As can be seen in Exhibit 2, Defendants' Service Vehicle is a vehicle including at least one upstanding side wall, in that it is a truck, which is a vehicle, and incorporates at least one wall that is used to enclose a rear portion of the truck.

16. As can be seen in Exhibit 2, Defendants' Service Vehicle includes an interior space surrounded by the at least one upstanding side wall and configured to receive at least one person, in that the rear portion of the truck is designed to allow at least one person to be present therein.

17. As can be seen in Exhibit 2, Defendants' Service Vehicle includes an opening extending through the at least one upstanding side wall and through which an item may be passed from the interior space to outside of the vehicle, in that there is a window formed in the side wall, and that window is used to pass items to customers from the inside of the rear portion of the truck.

18. As can be seen in Exhibit 2, Defendants' Service Vehicle includes a liquid toppings dispensing system including a housing, in that it incorporates multiple spigots, enclosed by and supported by a frame, that are used to dispense liquid flavoring onto items sold to customers. In addition, the liquid toppings dispensing system is positioned adjacent to, and opposing, the at least one upstanding side wall, in that it is in close proximity to, and opposing, the side wall of the truck. In addition, the liquid toppings dispensing system includes a plurality of liquid dispensers configured to dispense at least one liquid topping onto the item, in that there is more than one spigot used to dispense liquid flavoring onto items sold to customers. In addition, each of the plurality of liquid dispensers are in fluid communication with at least one reservoir holding the at least one liquid topping, in that Defendants' Service Vehicle includes containers that house liquid toppings, and each spigot is attached to a container through a hose. In addition, the liquid toppings dispensing system is located externally of the at least one upstanding side wall and spaced entirely laterally therefrom by a gap, in that it is mounted on the outside of the truck, and there is a space between it and the side wall of the truck.

19. As can be seen in Exhibit 2, Defendants' Service Vehicle also incorporates each of the limitations the limitations of 2, 3, 4, 6, 7, and 10 of the '447 patent, as recited in Exhibit 1 hereto.

20. On information and belief, the acts of infringement complained of herein are being carried out willfully and with full knowledge by Defendants of the '447 patent. To explain, upon information and belief, Defendants are a franchise of Tikiz Shaved Ice & Ice Cream and/or Tikiz Franchising, LLC ("Tikiz"). As a franchise of Tikiz, Defendants are or should be aware from their interactions with Tikiz that Tikiz is aware of and monitors the patents owned by Kona Ice. Upon information, through those interactions, Defendants are aware

generally that Kona Ice owns patents relating to service vehicles that provide shaved ice and confections. Upon further information and belief, through those interactions, Defendants may be aware that Kona Ice is the owner of the '447 patent.

21. As a result of these actions by Defendants, Kona Ice has suffered and continues to suffer substantial injury, including irreparable injury, and will result in damages to Kona Ice, including loss of sales and profits, which Kona Ice would have made but for the acts of infringement by Defendants, unless Defendants are enjoined by this Court.

WHEREFORE, Kona Ice prays for relief against Defendants as follows:

- A. That a judgment be entered that Defendants have infringed, induced the infringement of, or contributed to the infringement of, United States Patent No. 9,751,447;
- B. That Defendants, their agents, sales representatives, servants and employees, associates, attorneys, parents, successors and assigns, and any and all persons or entities acting at, through, under or in active concert or participation with any or all of them, be enjoined and restrained preliminarily during the pendency of this action and thereafter permanently, from infringing United States Patent No. 9,751,447;
- C. That a judgment be entered that Defendants be required to pay over to Kona Ice all damages sustained by Kona Ice due to such acts of infringement and that such damages be trebled pursuant to 35 U.S.C. § 284 for the willful acts of infringement complained of herein;
- D. That this case be adjudged and decreed exceptional under 35 U.S.C. § 285 entitling Kona Ice to an award of its reasonable attorney fees and that such reasonable attorney fees be awarded;
- E. That Kona Ice be awarded its costs and prejudgment interest on all damages; and



F. That Kona Ice be awarded such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff Kona Ice, Inc. hereby demands and requests trial by jury of all issues raised that are triable by jury.

Dated: March 1, 2018.

Respectfully submitted,

KONA ICE, INC.

/s/ William J. Rieder

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**BEFORE THE UNITED STATES  
JUDICIAL PANEL ON MULTI-DISTRICT LITIGATION**

IN RE:	)	MDL No. 2832
	)	
LIQUID TOPPING DISPENSING	)	
SYSTEM ('447) PATENT LITIGATION	)	
	)	

**NOTICE OF TAG-ALONG CASES**

Exhibit C

JURY,LC3

**U.S. District Court  
Southern District of Ohio (Cincinnati)  
CIVIL DOCKET FOR CASE #: 1:18-cv-00409-MRB**

Kona Ice, Inc. v. O'Connor et al  
Assigned to: Judge Michael R. Barrett  
Cause: 35:271 Patent Infringement

Date Filed: 06/11/2018  
Jury Demand: Plaintiff  
Nature of Suit: 830 Patent  
Jurisdiction: Federal Question

**Plaintiff****Kona Ice, Inc.**

represented by **Brett A Schatz**  
Wood Herron & Evans  
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Cincinnati, OH 45202  
513 241-2324  
Fax: 513-241-6234  
Email: bschatz@whepatent.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant****Sean O'Connor****Defendant**

**Rikki O'Connor**  
*doing business as*  
**Tikiz of Cincinnati**

Date Filed	#	Docket Text
06/11/2018	<u>1</u>	COMPLAINT with JURY DEMAND against Rikki O'Connor, Sean O'Connor ( Filing fee \$ 400 paid - receipt number: 0648-6476179), filed by Kona Ice, Inc.. (Attachments: # <u>1</u> Exhibit 1-US Patent 9751447, # <u>2</u> Exhibit 2-Photographs, # <u>3</u> Civil Cover Sheet, # <u>4</u> Summons Form) (Schatz, Brett) (Entered: 06/11/2018)
06/12/2018		If this case is referred, it will be to Magistrate Judge Stephanie K. Bowman. (mr) (Entered: 06/12/2018)
06/12/2018	<u>2</u>	Summons Issued as to Rikki O'Connor and Sean O'Connor. (mr) (Entered: 06/12/2018)
06/12/2018	<u>4</u>	

[https://ecf.ohsd.uscourts.gov/cgi-bin/DktRpt.pl?216244349595158-L\\_1\\_0-1](https://ecf.ohsd.uscourts.gov/cgi-bin/DktRpt.pl?216244349595158-L_1_0-1)

6/29/2018

		Corporate Disclosure Statement by Plaintiff Kona Ice, Inc.. (Schatz, Brett) (Entered: 06/12/2018)
06/25/2018	<u>5</u>	SUMMONS Returned Executed as to Defendants Rikki O'Connor, Sean O'Connor. Rikki O'Connor served on 6/16/2018, answer due 7/9/2018; Sean O'Connor served on 6/16/2018, answer due 7/9/2018. (Schatz, Brett) (Entered: 06/25/2018)

PACER Service Center			
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6/29/2018

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

KONA ICE, INC.

Plaintiff,

vs.

SEAN O'CONNOR and  
RIKKI O'CONNOR  
D/B/A TIKIZ OF CINCINNATI,

Defendants.

Civil Action No.: 1:18-cv-00409

Judge:

**COMPLAINT FOR PATENT INFRINGEMENT AND DEMAND FOR JURY TRIAL**

Plaintiff Kona Ice, Inc. ("Kona Ice") complains against the Defendants Sean O'Connor and Rikki O'Connor, doing business as Tikiz of Cincinnati ("Defendants") as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement and arises under the Patent Laws of the United States, Title 35, United States Code.

**THE PARTIES**

2. Kona Ice is a Kentucky corporation having its principal place of business at 5945 Centennial Circle, Florence, Kentucky 41042. Kona Ice offers frozen treats, including flavored shaved ice, through service vehicles, and it offers its products throughout the country through franchises.

3. Upon information and belief, Defendants Sean O'Connor and Rikki O'Connor are individuals doing business as Tikiz of Cincinnati, having a place of business at 9350 Floral Avenue, Cincinnati, Ohio 45242, are actively, continuously, and systematically engaging in

Case: 1:18-cv-00409-MRB Doc #: 1 Filed: 06/11/18 Page: 2 of 7 PAGEID #: 2

business in the State of Ohio. Defendants have substantial and continuous contacts with this judicial district through their business activities.

### **JURISDICTION AND VENUE**

4. Federal question jurisdiction is conferred pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue in this Court is based upon 28 U.S.C. §§ 1391(b)-(c), and 1400(b). Upon information and belief, Defendants reside in the Southern District of Ohio and have their principal place of business in Cincinnati, Ohio, and as a result have a regular and established place of business within this district.

### **BACKGROUND FACTS**

6. Kona Ice has, over the past several years, established a reputation as a supplier of frozen treats, including flavored shaved ice, in the United States. Kona Ice is represented through its franchisees throughout the United States.

7. The technology used by Kona Ice in its service vehicles, through which it offers frozen treats, including flavored shaved ice, is disclosed in United States Patent No. 9,751,447, entitled "Liquid Toppings Dispensing System" ("the '447 patent"), which was duly and legally issued on September 5, 2017. A copy of the '447 patent is attached hereto as Exhibit 1.

8. Kona Ice is the owner by assignment of the '447 patent.

9. On information and belief, Defendants use, operate, and own, service vehicles through which they offer frozen treats, including flavored shaved ice ("Defendants' Service Vehicle"). An image of Defendants' Service Vehicle is attached hereto as Exhibit 2.

**COUNT I - INFRINGEMENT OF U.S. PATENT NO. 9,751,447**

10. The allegations of paragraphs 1-9 are incorporated herein by reference as though fully set forth herein.

11. Defendants have infringed and continue to infringe the '447 patent by their operation and use of Defendants' Service Vehicle, through which they offer frozen treats, including flavored shaved ice. Defendants have infringed at least Claims 1, 2, 3, 4, 6, 7, and 10 of the '447 patent.

12. Claim 1 of the '447 patent recites the following limitations:

A mobile confectionary apparatus, comprising:

a vehicle including at least one upstanding side wall;

an interior space surrounded by the at least one upstanding side wall and

configured to receive at least one person;

an opening extending through the at least one upstanding side wall and through

which an item may be passed from the interior space to outside of the vehicle; and

a liquid toppings dispensing system including a housing being positioned adjacent to, and opposing, the at least one upstanding side wall and including a plurality of

liquid dispensers configured to dispense at least one liquid topping onto the item,

each of the plurality of liquid dispensers being in fluid communication with at

least one reservoir holding the at least one liquid topping, with the liquid toppings

dispensing system being located externally of the at least one upstanding side wall and spaced entirely laterally therefrom by a gap.

13. Defendants' Service Vehicle incorporates each of the above recited limitations of Claim 1 of the '447 patent.

14. As can be seen in Exhibit 2, Defendants' Service Vehicle is a mobile confectionary apparatus, in that it is a service truck that can be moved, and it is used to provide confections to customers.

15. As can be seen in Exhibit 2, Defendants' Service Vehicle is a vehicle including at least one upstanding side wall, in that it is a truck, which is a vehicle, and incorporates at least one wall that is used to enclose a rear portion of the truck.

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opposing, the at least one upstanding side wall, in that it is in close proximity to, and opposing, the side wall of the truck. In addition, the liquid toppings dispensing system includes a plurality of liquid dispensers configured to dispense at least one liquid topping onto the item, in that there is more than one spigot used to dispense liquid flavoring onto items sold to customers. In addition, each of the plurality of liquid dispensers are in fluid communication with at least one reservoir holding the at least one liquid topping, in that Defendants' Service Vehicle includes containers that house liquid toppings, and each spigot is attached to a container through a hose. In addition, the liquid toppings dispensing system is located externally of the at least one upstanding side wall and spaced entirely laterally therefrom by a gap, in that it is mounted on the outside of the truck, and there is a space between it and the side wall of the truck.

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